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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,336	10/31/2001	Stanley J. Kopecky	112703-208	5203

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EXAMINER

ARNOLD III, TROY G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 02/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/003,336

Applicant(s)

KOPECKY, STANLEY J.

Examiner

Troy Arnold

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 12 and 15-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13 and 14 is/are rejected.
- 7) ☒ Claim(s) 6, 8 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_. 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election with traverse of species 1 in Paper No. 8 is acknowledged. The traversal is on the assertion(s) that 1) the election is based on (independent) claims, not figures, and that 2) there are generic claims. This is not found persuasive because the election was based on three distinct species which were outlined in the election requirement as follows:

“(S)pecies I, as claimed in claim 1, a package comprising a housing, a sheet inside the housing, and consumable products attached directly to the wrapped sheet; species II, as claimed in claim 15, a package comprising a housing, a sheet inside the housing, and individually wrapped consumable products attached to the sheet; and species III, as claimed in claim 18, a package comprising a housing, with an adhesive area (for retaining a product) on an inner surface.”

The three distinct species are clearly identified, as required by the MPEP 809.02(a). The corresponding claims were merely listed to clearly point out the different species, as is acceptable. MPEP 809.02(a) does not require each species to be shown in a Figure. However, for the Applicant's reference, species 1 appears to be shown in Fig 1, and species II appears to be shown in Fig 2. There does not appear to be a Figure showing species III. Regarding generic claims, contrary to the Applicant's remarks, claim 1 is not generic to the species outlined in claims 15 and 18 – claim 1 requires products attached to the sheet (i.e. attached *directly* to the sheet) whereas the

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species outlined in claim 15 requires individual product wrappers attached to the sheet, with the products inside the individual wrappers. Species III requires attachment points inside the housing, for the product.

Claims 12 and 15-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species II and III, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 8.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 5, 7, 9-11 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Richardson. Regarding claim 1, Richardson teaches a package for housing consumable products comprising a housing (the outer layer of sheet A), a sheet (the inner layer of sheet A) disposed inside the housing, and a plurality of consumable products C releasably attached to the sheet (candy or gum will be releasably attached to the wax sheet A at A' by virtue of the nature of the two materials), the products configured within the housing so that the consumer can grasp and remove at least one of the consumable products from the sheet and housing. Regarding claim 2,

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Richardson's housing (the outer layer of sheet A), includes plural walls that define an opening and a lid (the endmost outermost piece) hingedly connected to a side wall piece, the lid adapted to cover the opening. Regarding claim 4, the sheet (inner part of A) and housing (outer part of A) are attached. Regarding claims 5 and 7, as noted above, the wax paper taught by Richardson will be adhesive to some degree, and the gum or candy will releasably adhere to these (wax) areas of the sheet. The limitations of claims 9-11 are clearly taught by Richardson. Regarding claim 13, Richardson also teaches sheet B inside the housing.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Kappes and also by Clark. Regarding claim 1, Kappes teaches a package for housing consumable products comprising a housing (the outer sheet C), a sheet (the inner sheet B) disposed inside the housing, and a plurality of consumable products A releasably attached to the sheet (candy or gum will be releasably attached to the wax sheet by virtue of the nature of the two materials, see column 2, beginning at line 61), the products configured within the housing so that the consumer can grasp and remove at least one of the consumable products from the sheet and housing. Regarding claim 1, Clark teaches a package for housing consumable products comprising a housing, a sheet (the inner sheet B) disposed inside the housing, and a plurality of consumable products A releasably attached to the sheet (chewing confections will be releasably attached to the wax sheet by virtue of the nature of the two materials), the products configured within the housing so that the consumer can grasp and remove at least one of the consumable products from the sheet and housing.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richardson in view of Krautsack and Official Notice. Richardson teaches all the limitations of claim 3 except a cutout in a wall. Krautsack teaches cutouts in the wall of a housing, as seen in Fig 7. Official Notice is also taken that cutouts in package walls are old obvious and well known. It would have been obvious in view of Krautsack and Official Notice to one of ordinary skill in the art at the time the invention was made to incorporate cutouts into the invention of Richardson for the purpose of allowing better gripping of the housing for removal.

***Allowable Subject Matter***

Claims 6, 8 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Troy Arnold whose telephone number is 703-305-0621. The examiner can normally be reached on Tuesday-Thursday, 9:30-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-0302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Troy Arnold  
Examiner  
Art Unit 3728

TGA  
February 19, 2003

A handwritten signature in black ink, appearing to read "Mickey Yu", with a long, sweeping underline.

Mickey Yu  
Supervisory Patent Examiner  
Group 3700